

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

GEORGE NOEL,)	CV 04-40-H-DWM
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
DR. RANTZ; DR. RAMA;)	
R.J. REYNOLDS TOBACCO COMPANY,)	
)	
Defendants.)	
_____)	

On May 10, 2005, United States Magistrate Judge Carolyn S. Ostby filed Findings and Recommendation in this matter. Plaintiff, a pro se prisoner, timely objected. Plaintiff is therefore entitled to de novo review of the record. 28 U.S.C. § 636(b)(1).

Noel claims that R.J. Reynolds Company sold him cigarettes without warning him that they were addictive and could cause chronic obstructive pulmonary disease, which he acquired. He also claims that Dr. Rama and Dr. Rantz refuse to treat his disease and have given him an inhaler that seems to be making his

condition worse.

As to R.J. Reynolds Company, a private entity, Noel has not alleged facts sufficient for this Court to find that the Company was acting under color of state law, which is required to state a claim under § 1983.

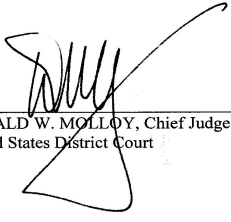
As to Dr. Ramakrishna and Dr. Rantz, Noel must show more than a mere disagreement with the doctors regarding his need for or course of medical treatment in order to state a claim. Noel has not done so. He alleges that the inhaler the doctors provided is ineffective. However, Noel's disagreement with the method of treatment and belief that there might be some better method available is insufficient to show that the doctors are acting with deliberate indifference to Noel's medical condition.

Upon de novo review, I find no error in Judge Ostby's findings and recommendation that Noel's Amended Complaint be dismissed for failure to state a claim on which relief may be granted. Noel raises nothing in his objection that calls Judge Ostby's findings and recommendation into question.

Based on the foregoing, IT IS HEREBY ORDERED that:

1. Judge Ostby's Findings and Recommendation (**dk t #4**) are adopted in full.
2. Noel's Amended Complaint (**dk t #3**) is DISMISSED.
3. The docket shall reflect that Noel's filing of this action counts as one strike against him, pursuant to 28 U.S.C. § 1915(g).

DATED this 9th day of August, 2006.



DONALD W. MOLLOY, Chief Judge
United States District Court